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FEB. 18, 1730.

# REMARKS

FOR

SIMON Lord FRASER of LOVAT, on the Information for HUGH MACKENZIE, Esq; I. On the Argument from the Rights of the Family of LOVAT. II. On the general Point of Law. III. On the Instances raised in that Information.

THOUGH every Thing that is material in this Information, be sufficiently obviated or answered in that of the Pursuer, and in the Papers to which it refers; yet the Pursuer begs Leave to offer some few Remarks that occur upon perusing the Defender's Information itself.

The Defender sets forth what he calls, *The State of the Rights of the Family of* Lovat, concerning which the Pursuer begs Leave to refer to *the short State of the Argument, from the Investitures of the Lordship or Estate of the Family of* Lovat, formerly offered for him*, to which he shall add these further Remarks.

* State of Instances, *Decem.* 23, 1729. p. 16, &c.

*First*, As to the Conclusions drawn by the Defender†, from the Rights of the Family, it will appear from the short State above mentioned, that there is no Evidence that the Family of *Lovat* was noble, in the proper Sense of that Word, in the Year 1416. Neither is it true, that by the Writings recited by the Defender, it appears, that the *whole Estate, and every the least*

† P. 7.

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*Parcel of it, was, till the Year* 1539, *ſettled in Fee ſimple to the Heirs-general at Law.* For moſt of theſe Parcels of Lands are taken ſimply *hæredibus*, though the Defender takes the Liberty to underſtand that, as if the Word *quibuſcunque* were added in the Charters: And amongſt all the Writs and Evidents referred to, or produced by him, there is not one which concerns the Eſtate of *Lovat* itſelf, from which the Title has been always taken; and the Purſuer challenges the Defender to produce one ſingle ancient Charter of the *Lordſhip* or *Barony* of *Lovat* that is not granted in favour of the Heirs-male. If the Defender then, from theſe ancient Charters of certain Parcels of the Eſtate, thinks it proper to infer, as he does, in Page 42, *That the Dignity of* Lovat, *from the Beginning, was underſtood to be deſcendable to the Heirs in Law, otherwiſe it cannot be imagined, that the Eſtate would have ſtood ſo long deviſed after that manner, to give Occaſion to the rending it from the Honours*; how will he anſwer the like Argument, when it is turned upon him, from the conſtant and unaltered Courſe of Succeſſion to Heirs-male, in which the Eſtate ſtood, from the 1539, and downwards? And it is to be obſerved, that the Eſtate thus provided, was the Barony of *Lovat*, to which almoſt all the other Parcels of Lands formerly deſtined to Heirs whatſoever, or in general *hæredibus*, had been annexed and united by that Charter 1539. And if there is any Abſurdity in ſuppoſing, that an Eſtate could be ſuffered to be deſcendable to the Daughters of a Family, inſtead of remoter Heirs-male ſucceeding to the Honours, it would be far more abſurd to ſuppoſe it taken in a Way that might have carried it from Daughters enjoying the Honours, to remoter Heirs-male without the Honours.

There is yet another Argument from the Rights of the Family, which the Defender has furniſhed to the Purſuer, *viz.* P. 20. where he aſſerts, *That there are many Inſtances in which, though the Honours have come into a Family by Heirs-female, yet*

*theſe have, by new Grants of the Earldom or Lordſhip to Heirs-male, been limited by the Crown, to the Excluſion of Females, and that the Deſcent of a Dignity by Law is governed not only by Patent, but by the Charter of a Lordſhip, or other dignified Barony.* Tho' theſe are Propoſitions the Purſuer can by no Means admit to be univerſally true, yet he thinks it deſerves to be noticed, how this Argument of the Defender's proceeds in Favour of the Purſuer, and totally deſtroys the Defender's own Claim; for ſuppoſing for once, that till the Year 1539, the whole Eſtate of the Family of *Lovat*, or the Caſtle and Lands of *Lovat*, as well as the reſt, had ſtood provided to Heirs whatſoever, or even that the Honours had come into the Family by an Heir-Female (neither of which Things are true) yet according to the Defender, by the new Grant of the Lordſhip or dignified Barony to Heirs-male, by the Charter 1539, the Honours were limited by the Crown to Heirs-male, to the Excluſion of Females: For though the Defender calls upon the Purſuer to *vouch by any Grant, that the Honours of* Lovat *were limited in that Matter*; *and admits, that no doubt the Defender then behoved to ſuccumb*; the Anſwer is extremely obvious, for the Defender ſurely means not an expreſs Limitation of the *Honours apart*, but ſuch as he himſelf aſſerts to be implied or contained in a Charter of the Lordſhip, or dignified Barony, to Heirs-male. Now, ſuch Charter the Purſuer does ſhew, and the Defender admits, *viz.* that of the Barony of *Lovat*, which is granted by the Sovereign in the Year 1539, *Dilecto Conſanguineo ſuo, Hugoni Domino Fraſer de Lovat, & hæredibus maſculis.*

It ſeems impoſſible to deny, that the Barony thus granted, is a *dignified Barony*, as much as any other Lord's Eſtate can be ſo, and in the Senſe of the Defender; for it is that very Barony from which the Title of Dignity is taken, and, according to the Defender, had been enjoyed for above a Century before. If then *Hugh* Lord *Lovat* was, in the Year 1539, a

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*Lord Baron*, what was his *Barony?* was it any-other than the *Barony* of *Lovat* contained in this Charter? And is it poſſible to deny, that this was a *dignified Barony* (if any ſuch there be) from which the Sovereign gives the Lord Baron his Title? wherefore, according to the Defender, we have by this Charter of the *dignified Barony*, the Deſcent of this Dignity of *Lovat* expreſsly limited to *Heirs-male*, not by an *Argument*, or a *Preſumption* only, but *directly*, as if it were a *Patent*, containing the Honours alone, that was yet extant, and produced in Court; after which the Defender cannot be ſurpriſed, if the Lords ſhould make it little Difficulty in giving the Cauſe againſt him, ſince *out of his own Mouth he is thus condemned.*

It was a very vain Diſtinction, which at the Debate was advanced, betwixt the Words *Dominium* and *Baronia*, as if the former of theſe only were proper to *dignified Baronies*, and that the latter ſignified no more than a *common Barony*, which hundreds of Gentlemen had. Slender indeed is this Refuge, upon which the whole Streſs of the Defender's Cauſe is laid. For in Fact it is certain, and by many authentick * Vouchers can be proved, that theſe two Words, *Dominium* and *Baronia*, have been promiſcuouſly uſed from the Time of our earlieſt Records to this Day, that the *Baronies* of ſimple *Gentlemen* are frequently called *Dominia*, and the *Dominia* of Lords are called *Baronies*; but according to the *Perſon* to whoſe Eſtate theſe Terms are applied, the Senſe of theſe Words is to be determined. And would it not be more abſurd to ſay, That theſe Gentlemen whoſe Eſtates are at this Day called *Dominia*, in the Charters from the Crown, are all *Peers* or *Lord Barons*, than it is to alledge, that *Lovat* is not a *Lordſhip*, becauſe it is

* The Barony of *Houſton* is called *Dominium*, ſo is the Barony of *Ranſurlie*, both in *Renfrew* Shire The Barony of *Luſs* in *Dumbarton* Shire, is called *Dominium*, and ſo is the Barony of *Swinton*, in *Berwick* Shire, *&c.* On the other Hand, the *Dominia* of Lords are called only *Baronies*, as the Eſtate and Lordſhips of *Hume*, *Semple*, *Lyle*, *Lovat*, &c.

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called a *Baronia* in the Charter above-recited, to *Hugh* Lord *Fraſer* of *Lovat*.

And if either of theſe two Words be more fit than the other, to be appropriated to the Eſtates of *Lords*, it is not *Dominium*, which ſignifies no more than *Property*, but that of *Baronia*, as derived from *Baro*, which is the ancient *nomen dignitatis*, and ſo continues to this Day; for in every Patent of Honour, either in *England* or *Scotland*, by which one was created a *Lord of Parliament*, he is nominated and created by the Sovereign a *Baron* of the reſpective Kingdoms, and by that Title the Peers of that Order now take their Place, on the *Baron's Bench* in the Houſe of Lords of *Great-Britain*: And as it is certain, that the Term of *Baron* has always had different Significations, ſo the higheſt and moſt proper Senſe of it, is to expreſs the dignified Baronies, or thoſe from which the *Titles* were taken of *Barons-Banrents*, or *Lords of Parliament*; And therefore the Purſuer vouches by this Charter, that the *Honours* of *Lovat* were limited to *Heirs-male*, as well as if the *Eſtate* of *Hugh* Lord *Lovat* had been called *Dominium*; and there is no Doubt but the Defender (according to his own Admiſſion) muſt ſuccumb in the preſent Queſtion.

And this being the State of the Inveſtitures of the Family of *Lovat*, from the Year 1539, downwards, it is certain, that nothing which has ſince happened, can alter the Deſtination of the Honours. For, 1*mo*, Even a Reſignation of the Eſtate by one of the later Lords *Lovat* in the Hands of the Crown, for a new Infeftment in Favours of his Heirs whatſoever, could not then have that Effect, ſuppoſing that anciently it could, becauſe, ever ſince the Reign of *James* VI. when the Cuſtom began, that all the Grants of Honours from the Crown, were made by diſtinct *honorary Patents*, containing no other Subject than the Honours,

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it has never been *known*, or *underſtood*, that any Charter of an Eſtate, in whatever Manner deviſed, could have any Influence or Effect concerning the Honours of the Reſigner; unleſs there was at the ſame Time an expreſs Reſignation of the Dignity itſelf, and a new Grant of that in like Manner from the Crown; and no Inſtance can be produced, at leaſt ſince the Reign of *James* VI. where the Deſcent of Honours was altered in that Manner by a Charter, upon Reſignation of an Eſtate, not *expreſly mentioning the Honours* in the *Reſignation* from the *Subject*, or in the new *Grant* from the *Sovereign*.

But, 2*dly*, There was never in Fact, any ſuch Reſignation made by a Lord *Lovat*, and a new Charter thereupon obtained; for the proviſional Infeftment granted in the Year 1666, by *Hugh* Lord *Lovat*, to Mrs. *Anne* his Daughter, was a baſe Infeftment, holding of himſelf, and became void upon the Exiſtence of a Son of his Body.

Neither did the next *Hugh* Lord *Fraſer*, the Defender's Grandfather, ever himſelf reſign the *Eſtate* or *Barony* of *Lovat* to the Crown, and obtain a new Charter to Heirs whatſoever. It is true, he became obliged in his Contract of Marriage in the Year 1685, to provide his Eſtate, Lands, and Baronies in that Manner; but he ſoon perceived his Error, and in the Year 1696, made a new Diſpoſition of his Eſtate in Favours of his Uncle, the Purſuer's Father and his Heirs-male; ſo that the only Inveſtitures of the Eſtate upon which the Defender can pretend to ſucceed, are thoſe which proceeded upon *Appriſings*, or Incumbrances picked up for that Purpoſe, by the late *Preſtonhal*, from Creditors of the Family; but theſe Inveſtitures can as little carry the *Honour* and *Dignity* to the Defender, as it could have been carried or poſſeſt by thoſe Creditors or Appriſers themſelves. And thus it appears, That as, according to the Defender's Argument, the *Charter* of the *dignified Barony* of *Lovat* in the

the 1539, did *ſettle* the Honours with the *Barony* itſelf, to *Heirs-male*, the Dignity muſt ſo continue limited to this Day, to the Excluſion of Females and their Iſſue; for by no Act of the Crown, ſince the Year 1539, has that former Settlement been altered, or a new *Deſcent* of the *Honours* to *Heirs whatſoever*, introduced.

The Purſuer has choſen to draw the above Remarks together in one View, though they relate to Paſſages diſperſed through ſeveral Parts of the Defender's Information, becauſe they all relate to the Charters and Writings of the Family; but he ſhall now proceed to ſet down a few ſhort Remarks upon other Paſſages of the Information, in the Order they ly in it.

Remarks on the Decreet of Parliament ſubjoined to Page 3d.

As to the Decreet referred to, it is to be obſerved, That all theſe great Men mentioned in it, were then really in the Ranks of Lords of Parliament, by Dignity of Peerage: For 'tis dated the 17th of *March*, 1430, according to our Computation, about three Years after the Act of 1427, whereby the ſmall Barons and Freeholders are exempted from perſonal Attendance in Parliament, when the Creation of Lords Barons by Dignity commenced. And it cannot be pretended, That there was any of the *Domini* there mentioned, who, and their Succeſſors, were not in the Rank and Quality of Lords of Parliament ever after; and for the Variation of the Stile, when the Diſtinction of Lords of Parliament from other Barons, was but newly begun, 'tis no great Wonder that they were not at firſt uniform in their Deſignations, ſince that depended moſtly upon Clerks, who frequently varied in their Stiles from one another. Nor do we find that the Lords of Parliament are uniform in their Deſignations, till the ſubſequent Reign of King *James* II.

Remarks on the Propoſitions contained in the Defender's Information, P. 8. *poſt Medium.*

The firſt Propoſition is agreed to, as to patrimonial Eſtates. The ſecond Propoſition may be true in ſome Senſe, yet it is as true, that neither our Hiſtorians nor Lawyers have told us any where, That there is no Diſtinc-

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tion to be made, or aſſerted, that the Succeſſion in Dignities deſcends by the ſame Rules, and to the ſame Perſons, that Succeſſion in Lands and other patrimonial Eſtates *in Commercio* do deſcend. But on the contrary, they deliver their Opinions, as to the Reaſons and Foundations of our Cuſtomary Rules of Succeſſion, and as to the Steps and Degrees, by which they were introduced; and direct us to ſuch Rules of our Determination, where our Cuſtoms are dark, as makes the Diſtinction which was unneceſſary to be noticed, in the Days of our firſt Lawyers, as being *vulgo notum*, ariſe very clear in our Day, though the Courſe of Time, and few Occurrences of this Kind happening, have contributed to render the Point more capable of being diſputed.

Remarks on the Defender's Proof of the firſt Propoſition, P. 9.

Succeſſion amongſt the *Jews*, or as the Defender has it, by the Divine Law, went upon extremely different Rules, (as all their Politicks did) from thoſe we follow in *Scotland*; almoſt an equal Partition took Place amongſt them; Primogeniture and all its Conſequences obtain with us, which affects all our Conſtitution, and particularly the *Ratio decidendi* in Succeſſions *ab inteſtato*, in ſo ſtrong a Manner, That it is a Wonder to ſee an Authority brought from the one to the other. As to *Leſlie*, *Chalmers* and *Innes*, and the Stories of the *Picts*, the Purſuer apprehends, cloſe Arguments are not in great Abundance, where ſo extremely diſtant and uncertain Authorities are relied on.

The Purſuer apprehends, that the Paſſage of the learned *Craig* is intended by the Author, to prove quite the Reverſe of what it is here adduced for, *viz.* That long before the Conqueſt of *England*, the feudal Law, that is, Male-ſucceſſion, *ex proviſione legis*, and Female-ſucceſſion *ex proviſione hominis*, took Place in *Scotland*.

As to the Books of *Regiam Majeſtatem*, the Purſuer apprehends, that theſe Paſſages adduced from it, relate to Succeſſion

ceſſion in patrimonial Eſtates *in commercio* only; and that it now here affirms, that Dignities of Peerage in *Scotland* deſcend by the ſame Rules as Eſtates. But whatever be in theſe Books, the Purſuer cannot admit them to be of undiſputed Authority, ſince *Craig*, *L.* 1. *Tit.* 8. *P.* 7. and Lord *Stair*, *L.* 1. *Tit.* 1. *Par.* 16. and again, *L.* 3. *Tit.* 4. *Par.* 27. give their Opinions ſo ſtrongly againſt their Authority. To conclude this Propoſition, if the Defender underſtands it only of patrimonial Eſtates *in commercio*, which, by common Cuſtom, are granted *hæredibus quibuſcunque*, the Purſuer agrees with him in it, and it will not affect the preſent Queſtion.

Remarks on the Objection ſtated in the Defender's Information, Page 10th, *prope finem*, and his Anſwers to it, P. 11 and 21.

This Objection is ſtated and anſwered, as if the Purſuer had contended, that in our Days, and in the Days of Lord *Stair*, *Craig* and *Balfour*, Cuſtom had not, by the Frequency of the Addition of the word *quibuſcunque*, changed the natural and feudal Meaning of the Word *hæres*, without Addition: He has ſaid no ſuch Thing; but inſiſts, that the very Paſſage adduced from *Craig*, and the like Paſſage from Lord *Stair*, *L.* 3. *Tit.* 4. § 20, 21, 22. makes it very plain, that the Feudal Law was our proper Law in Matters of Succeſſion, and conſequently that with us, the original proper Signification of the Word *hæres* was Heirs-male, till Cuſtom, by the Frequency of adding the Word *quibuſcunque*, changed that Signification of it. The Purſuer further admits, That with relation to Settlements of all Eſtates, where the Addition of *quibuſcunque* has been common, the Word *hæres* has changed its Signification from Heirs-male to Heirs-general; but as the Reaſon of the Change lies upon the Frequency of the Word *quibuſcunque*, he apprehends, that if there are any Eſtates in the Grants or Settlements of which that Addition of the Word *quibuſcunque* has never been common, but very rarely or never uſed, that Alteration of the Signification of the Word *hæres* cannot take Place as to theſe Eſtates: That were to extend the Effect beyond the Cauſe; whereas the Purſuer apprehends, that the very abſtaining from the Uſe of the Word *quibuſcunque*, as to any particular Spe-

cies of feudal Rights, demonſtrates, that the Alteration induced by the Word *quibuſcunque*, was not to affect them.

As to the Inſtance of the Grant of the Conſtabulary to Sir *Gilbert Hay*, by King *Robert* the *Bruce*, 'tis to him & *hæredibus*; and this was ſo far underſtood of Heirs-male, by the Earls of *Errol* themſelves, that we have in this moſt noble Family, two ſeveral Inſtances, where an Heir-male excluded an Heir of Line, mentioned by the Lord *Lovat* in his Inſtances in the higher Dignity, page 9th. And the noble Lady, the Counteſs of *Errol*, now poſſeſſes the Honours of the Family, not by Virtue of the Grant by King *Robert* to Sir *Gilbert* her Anceſtor, & *hæredibus ſuis*, but in Virtue of a Reſignation, upon which a Charter was expede under the Greal Seal, in the 1674, by *Gilbert* Earl of *Errol*, in Favours of Sir *John Hay* of *Killour* her Father, of his Title, Honour, Dignity, and Precedency of Earl of *Errol*, together with the heritable Conſtabulary of *Scotland*; ſo that it was very juſt, that the Counteſs of *Errol* had her Right ſuſtained and affirmed by the Court of Claims at the laſt Coronation, and that the Lady's Deputy had his due Place aſſigned him.

As to the Inſtance adduced of *Strathern*; the Charter is granted by King *Robert* II. to Earl *David* his Son, & *hæredibus ſuis*. For a full Anſwer to this, the Purſuer refers to his printed Anſwer to the Inſtance of *Strathern*, whence it will appear, that by the Lawyers, the *juriſperiti*, as *Buchanan* ſays, *ex archivis*, as Sir *John Scot* ſays, the Earldom of *Strathern*, though granted to Earl *David*, & *hæredibus*, was conſtructed as a Male-fie.

But to put this Point out of all Diſpute, we have a ſolemn Decreet *in foro*, *partibus comparentibus*, of the Lords of Council and Seſſion, in the 1502, whereby a Service of *John* Lord *Somervel*, as Heir to his Father *William Somervel*, is reduced and declared null, on this preciſe Point, that the Inqueſt had found the deceaſed *William Somervel*, to have been

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the laſt veſt and ſeized of the Half of the Lands of *Gilmarton*, it being of Verity, that the ſaid Infeftment had proceeded upon a Charter from *Malice* Earl of *Monteith* (as Earl of *Strathern)* and that the ſaid Lands were Part of the Earldom of *Strathern*, to which the ſaid *Malice* had no Right, either in Property or Superiority; and *Alexander* then Earl of *Monteith*, Heir of Line to the ſaid *Malice* his Grandſire, and by him to *David* Earl of *Strathern*, is in the ſaid Decreet marked preſent, and confeſſing, that his Grandſire *Malice* Earl of *Monteith*, had no Right, either in Property or Superiority, to the ſaid Earldom of *Strathern*. This is a Deciſion ſo directly in Point, not only as to the Earldom of *Strathern*, but even as to the antient Meaning and Import of the Word *hæres*, without the Addition of the Word *quibuſcunque*, that the Purſuer hopes, it will leave no Place for further Diſpute about it. The Voucher of this is a Confirmation of the ſaid Decreet under the Great Seal, wherein it is narrated at full Length.

Remarks on the Defender's Proof of the 2d Propoſition, Page 13 and 14.

The above Remarks, particularly on the ſecond Propoſition itſelf, do ſufficiently clear, how far the Defender's Demonſtration of it affects the preſent Argument. *Balfour* and *Craig* wrote of Points, that had been the Subject of Litigation in their Time, eſpecially ſuch wherein Cuſtom had innovated the feudal Rules; but as that had then made no Impreſſion upon Succeſſion in Dignities, and no Body had thought of crouding them in with patrimonial Eſtates, it was too early for the Diſtinction to occur. As to the Paſſages from Lord *Stair* and Sir *George Mackenzie*, they plainly relate to Caſes where Succeſſion in Dignities fall to Females, *ex proviſione hominis*; or in one Caſe, *ex proviſione legis*, *viz.* upon the total Failzure of Heirs-male deſcended of the firſt inveſted. As to the Revocations of our Princes, *Craig*, *L.* 2. *Dieg.* 16. *Pag.* 4 and 5. has given a clear Account of the Reaſon on which they proceeded, which fully ſhows that they had Relation only to patrimonial

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nial Eſtates, but noways to Dignities; his Words are, *In iis revocationibus, ea verba, quibus princeps conſcientiæ ſcrupum, aut quia contra leges ea facta dicat, pretendit, puto male inſerta, & pro non inſertis habenda, &c.* And afterwards, *Quis enim neſcit grave præjudicium principum commodis fieri, quando cuſtodia mulieris ad eum devolvitur, quam ſi cuſtodia ſive warda fæminæ fuiſſet; nam fœmina hæres, ſi in wardam cadit, ſecum etiam totum hæreditatem plerumque trahit, cum maritagii hæredis maſculi plerumque non magna ſit æſtimatio.* So that the firſt Concluſion is without Foundation, and the ſecond only holds with Reſpect to patrimonial Eſtates, but noways to Dignities.

Remarks on the Defender's Proof of his 3d Propoſition on Page 14 and 15.

As to *Leſlie*, *Chalmers*, the *Picts*, and *Regiam Majeſtatem*, the Purſuer refers to what is above, and ſhall, rather than take up much Time, yield all that can be brought from theſe Authorities, to the Defender. But, as to the Inſtance of the Conſtabulary in the Family of *Galloway*, he ſays, 1*mo*, That it came firſt into that Family, upon the Failzure of Heirs-male. 2*do*, It was not hereditary, but at the Diſpoſal of the Crown, for it did not go in the direct lineal Succeſſion, but to ſuch Relations of the Family as the Crown thought fit. See the Purſuer's Anſwer, Page 30. As to what relates to the Family of *Carrick*, Page 16, ſee the Anſwer to *Carrick* in the Purſuer's Memorial in the Dignity of Earls; and we ſhall add, that when the Lady ſucceeded to the Eſtate of the Earldom of *Carrick*, there was, 1*mo*, No Heir-male exiſting of the firſt Grantee. And, 2*do*, It is plain, there was a new Creation to the Huſband, *Robert Bruce* himſelf, who was *Comes de Carrick*, who muſt have been inveſted, ſince the Son would otherwiſe have been Earl, without the Father's Reſignation, on the Moment of his Mother's Deceaſe; whereas the Dignity came to the Son, upon an After-reſignation of it by his Father.

As to what the Defender ſays, from the Hiſtory of *England*, the Purſuer has no where inſiſted, That the Rules of

of Succeſſion to Dignities in *England*, are the ſame with theſe in *Scotland*; on the contrary, he apprehends it is plain from many Arguments, and particularly from *Craig*, *L.* 1. *Dieg.* 7. and 8. that the Body of the *Engliſh* Law is originally *Saxon*, and that there is but a faint and imperfect Mixture of the Feudal Law, introduced by the *Normans* to it; and more particularly the Purſuer has ſhown in his own Information, that *William* the Conqueror followed the Rules of the *Saxon* Succeſſion in Dignities, in his Conceſſions of the Earldoms of *Northumberland* and *Leiceſter*, *&c.* whereas the Lands of *Scotland* are originally and properly feudal, as *Craig* has it, *L.* 1. *Dieg.* 4. *Hoc jus feudale hujus regni proprium & peculiare eſſe, ad quod in rebus dubiis recurrendum, &c.* And again, *L.* 1. *Dieg.* 8 § 10. *Ex ejus ſcaturigine & fontibus, omne jus quo hodie utimur in foro defluxerit.* And a little after, *Apud æquos rerum æſtimatores obtinebo nullum aliud eſſe jus proprium in materia ſucceſſionis hæreditariæ*, &c.

The Purſuer does not remember of his having made any ſuch Diſtinction between the Deſcent of Offices, and other noble Dignities, as the Defender mentions in the End of Page 15. And for Anſwer to what is ſaid concerning the Earldom of *Carrick*, for removing that imaginary Diſtinction, the Purſuer refers to what is above, concerning that noble Family. And as to what is ſaid from Sir *James Dalrymple*'s Collections, the Purſuer inſiſts, that he has advanced nothing but what is very conſiſtent with the Inſtances pointed at from that learned Author; he has no where alledged, that a Female never had a Peerage in her Perſon, far leſs that a Perſon of great Diſtinction, marrying the Daughter of a Peer, and who enjoyed his Eſtate by Succeſſion, was never created a Peer by the Title and Dignity of her Anceſtors, which appears to have been the Caſe of *Bruce* the firſt Earl of *Carrick*; on the contrary, the Purſuer agrees, that there are many Inſtances of Females enjoying the Dignity of Peerage;

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Peerage; but inſiſts that theſe were either after a total Failzure of Heirs-male of the firſt inveſted, or by particular Proviſion in the firſt Inveſtiture, *contra commune jus ſucceſſionis*, or more commonly by Creation with their Huſbands, at, or ſoon after their Marriage; and the Purſuer apprehends, that all the following Inſtances of Females enjoying the Dignity of Peerage, mentioned by the Defender, are in one or other of theſe Caſes.

Page 17. What relates to the Family of *Mar*, does not affect the preſent Queſtion; for when thoſe Ladies ſucceeded, the Male-Line was quite extinct; we ſhall therefore only remark, That 'tis ſaid, without any Authority, That King *James* II. founded his Claim to the Earldom of *Mar*, upon a Right of Blood, as being deſcended of a Daughter of the Family by King *Robert* I.'s Queen, who was the Earl of *Mar*'s Daughter. *Fordun*'s *Continuator* tells us upon what Occaſion he claimed it, in theſe Words, *Obiit Alexander Comes de Mar, Anno* 1437, *& quia Baſtardus erat, Rex ſibi ſucceſſit, quamvis de jure Domini Erſkine & Lyle ſuccedere debuiſſent.* And after that the Lord *Erſkine* was reſtored by the Queen and Parliament in the 1565.

As to what is aſſerted relating to the Earldom of *Fife*, the Purſuer judges the Inſtance to be fully anſwered, in what is ſaid in his Anſwers to the Defender's Condeſcendence in the Rank of Earls, *Page* 15.

The Inſtance of *Strathern*, which is here again repeated by the Defender, is fully anſwered in what is above, and in his ſaid Anſwers, *Page* 27, 28, and 29.

To what relates to the Caſe of the old Earl of *Buchan*, the Purſuer hopes he has given a full and ſatisfactory Reply in his ſaid printed Anſwers, in *Page* 11 and 12, and ſhall only add, That as to the Reduction and Declarator of Precedency, raiſed at the Inſtance of the Counteſs of *Buchan*, againſt the Earls of *Glencairn* and *Eglington* in the 1628, this was Three Years after ſhe and the Earl her Huſband had acquired Right to the Honour and Dignities which were enjoyed by the former Earls

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of *Buchan*, upon a Reſignation, in which it is remarkable, that the Heir-male concurred; Whereby, without all Queſtion, the Lady had a very juſt Title to the Precedency ſhe claimed, in regard that *James* Earl of *Buchan* her Anceſtor, was in the Quality of an Earl in the Reign of King *James* II. whereas neither the Earls of *Glencairn* nor *Eglington* were raiſed to their reſpective Dignities, till the Reign of King *James* IV.

As to what relates to the Family of *Athole*, the ſame is fully anſwered in the Purſuer's ſaid Anſwers, *Page* 6, 7, and 8. And as to the Family of *Athole* that is now poſſeſt of that Dignity, it was given by a new Patent to *John* Earl of *Tullybardine*; for 'tis plain the Dignity of the former Earl of *Athole*, who died in the Year 1594, failed with himſelf; and his eldeſt Daughter, the Counteſs of *Tullybardine*, was never Counteſs of *Athole*, nor is ſhe ever deſigned otherwiſe than *Eldeſt Daughter, and one of the four Heretrixes of* John *umquhile Earl of* Athole. So that her Son, after her Deceaſe, being created Earl of *Athole*, was not by any Right he had by Succeſſion to the Title, but merely by the Grace and Favour of the King, who was pleaſed to honour him with that Dignity. So that it is ſomewhat ſurprizing to find this Act of a Prerogative the Crown has, in diſpoſing of Dignities, (which was plainly exerciſed, to ſupply, by a new Creation, with an ancient Rank, the Defect of an Heir by a Female's Right) called a Judgment of the Crown, in Favour of ſuch Heir: For, to ſuppoſe the Heir by a Female had the Right of Succeſſion *ex lege*, is directly to ſay, That this Act of the Crown (or Judgment, if the Defender pleaſes to call it ſo) was ſuperfluous and unneceſſary. Page 21.

As to what is alledged in the Family of *Sutherland*, there is nothing like Courteſy appearing in the Huſbands of Heireſſes of Earldoms, ever ſince we had Records, without a new Erection; and this of *Adam Gordon* muſt be in the uniform Way of others, that is, he had been created by Cincture and Page 21.

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Belting, as the Manner was; for it would be very ſtrange to imagine, that if Courteſy in a Dignity was a common and uſual Thing in that Age, and yet that it ſhould have wore out ſo intirely in the next; that no Huſband of a Counteſs in this laſt Age, nor in our own Time, pretends to any ſuch Thing; for though the Dignity of the illuſtrious Family of *Errol*, though it be now in the Perſon of a noble Lady, by ſpecial Proviſion, yet the Gentleman her Huſband does not claim the Courteſy.

Remarks upon what the Defender ſays in Page 23d, 24th, and 25th, concerning the Alteration of our Conſtitution in the Reign of *James* I. and downwards.

The Defender ſeems extremely averſe to explain the true Nature of the Alteration introduced into the Parliament of *Scotland*, by the Acts here referred to, and the Difference between that and what happened in *England* in the Time of King *John*. The Purſuer therefore craves Leave here to ſtate that Matter in a few Words, and to explain in what Point both the Nations agreed, and wherein they differed. The Alteration in both Kingdoms was this, That an hereditary Seat in Parliament ſhould in neither Kingdom be held as a Right, Privilege or Burden (call it which you will) neceſſarily flowing from, and annexed to Lands held *in capite* of the Crown, and that all the Privilege to be held in Virtue of ſuch Tenure, ſhould be the Right of electing, or being elected to repreſent a Shire or County in Parliament; but that the Crown ſhould ſtill have a Power, as the Fountain of Honour, to raiſe ſuch of the ſaid antient Barons by Tenure to the Dignity of Peers, either by Writ or Patent, as the Crown pleaſed, and that thoſe ſo dignified ſhould have an hereditary Seat in Parliament; and in this both Nations agreed.

They differed indeed in this, That all the *Barones Majores* in *England*, were at once adopted into that Dignity in the Reign of King *John*, and the Crown continued from thence to the Time of *Richard* II. to exerciſe its Prerogative of granting Dignities of Peerage, and calling additional Barons in the ſeveral Ranks of Nobility, by

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ſpecial Writ; and from the Middle of *Richard* the II's Time began the Cuſtom of granting ſuch Dignities, entitling thoſe who were dignified, to an hereditary Seat in Parliament, by Patents of Honour, which will appear to have been uniformly granted and limited to Heirs-male, a few ſpecial Patents excepted.

On the other Hand, the Alteration was introduced into *Scotland* by ſlow Degrees, and was not perfected till ſeveral Ages after it was firſt begun; ſo that the hereditary Seat in Parliament *virtute tenuræ*, continued to be enjoyed for ſeveral Generations, *viz.* from the Reign of *James* I. to the Middle of *James* VI. while at the ſame Time the Crown was beſtowing hereditary Dignities of Peerage, like thoſe of *England*, by raiſing the Heads of great Families to the Dignity of Peerage, till at laſt, after a conſiderable Number of ſuch Peers by Dignity were erected, all thoſe who had enjoyed an hereditary Seat in Parliament *virtute tenuræ*, were at once reduced to have no other Right than that of electing, or being elected; ſo that the Defender ſuffers himſelf to be as much miſled, when he draws a Conſequence from the Succeſſion to a Seat in Parliament *virtute tenuræ*, to Succeſſion in Dignity, as he does when he infers Succeſſion in Dignities, from Succeſſion in patrimonial Eſtates *in commercio*, to which a Seat in Parliament was anciently annexed, if they held *in capite* of the Crown: But as Dignities never were patrimonial, nor *in commercio*, Succeſſion in them retained the original Nature of Feudal Rights, which neither were aſſignable, nor paſſed by Succeſſion to Heirs-general.

Remarks on the Defender's Inſtances on the Rank of Lords Barons. Page 25.

As to the Inſtances of *Carlyle*, we know not to what Purpoſe ſo long a Deduction of the Lord *Carlyle*'s Caſe is ſet down, when 'tis ſo fully ſet forth in all the Defender's Papers before, That *Michael* Lord *Carlyle* did diſpone his Eſtate to his ſecond Son, in the 1575, which was confirmed under the Great Seal, is a Fact cannot be refuſed by the

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Defender; That when the Competition commenced betwixt the Heir-male and the Heir of Line, great Hardſhips were put upon the Heir-male by the Relations of the Heir of Line, are plain and obvious; That the Heir-male may have waved his Right to the Dignity during the Competition, we allow; but deny that ever the Heir of Line obtained or uſed the Title of Lady *Carlyle* all that while. Indeed, when the Right to the Eſtate came to be veſted in her Perſon, ſhe called herſelf Lady *Carlyle* and *Torthorald*, but that was as Proprietor of the Eſtate of *Carlyle*, but we deny that ever the Peerage of the Family was in her, otherwiſe why would Mr. *Douglas* her Huſband have taken a new Creation to be Lord *Torthorald* in the 1609, which gave him a younger Rank and different Title?

Page 29. As to what is ſaid anent the Heir-male of the Family of *Harris*, and of the great Age he muſt have been, becauſe he was Heir-male of that Family, we are at a Loſs to ſee the Conſequence; for the Purſuer does not concern himſelf, what was the preciſe Relation in Blood that Heir-male had to the Lord *Harris*, nor whether he was Son, Grandſon or Great Grandſon of the Family; all that the Lord *Lovat* ſays, is, That he might be Heir-male of that Family, and yet not Heir-male of any of the Lords of *Harris*, and ſo could not have any Right to the Dignity, not being deſcended of the firſt Grantee; For, though he be called the Heir-male to the Lord *Harris*, he is not called Nephew to him, or Couſin-german, but Heir-male in General, and might be, as it is very probable he was, a very diſtant Male Relation, after ſeveral ſucceſſive Deſcents from a collateral Branch of the Family.

As to *Salton*, 'tis agreed on by thoſe who a e moſt converſant in Matters of Antiquity, the Lord *Salton* poſſeſſes the Honour by a new Patent, and an Act of Parliament con-

confirming that Patent; beſide, for what appears to the Purſuer, there was no Heir-Male of the Family, which might be a Motive to induce the King to give the Honour to the Heir of Line, on the Failure of the Males, with the former Precedency, which is a Practice the Crown has done in many Inſtances, as well as in the Family of *Philorth*.

As to the Caſe of *Oliphant*, the Purſuer is at a Loſs to Page 32. underſtand the learned Gentleman's Argument for aſſerting, in the Family of *Oliphant*, That the Eſtate was never erected into a Lordſhip; the Lords of *Oliphant* were plainly Lords of Parliament, in the Time of King *James* III. and in the Inveſtitures of their Eſtate, the Lordſhip of *Oliphant* is called *Baronia*, which was the ordinary Deſignation Lordſhips had; for *Dominium* no more imports a Peerage of a Lord Baron, or carries the Honour along with it, than it does of a Dukedom or Marquiſate; for we can venture to ſay, That moſt of all the Eſtates of Lords Barons, after their Creations, and being in the Rank of Lords, were erected only into *Baronias*; not a Word of *Dominium* was in the Families of *Hume*, *Leſlie*, *Semple*, &c.

The Purſuer no where aſſerts, That Sir *James Douglas* Page 36. the Huſband of the Heir of Line got the Title of Lord and Lady *Mordingtoun*, with the Rank and Precedency of the ancient Lord *Oliphant*, but ſays quite the contrary, *viz.* that the Lord *Oliphant*, the Heir-Male got his own Precedency in the ſame Rank and Degree he ſtood in, by Virtue of the Decreet of Ranking in the 1606, as appears by a Copy of it, ſet down by Sir *George Mackenzie*, in his Heraldry and Precedency, Page 47. compared with another Liſt of the Nobility inſert by Sir *George*, in his Precedency, Page 51. in both which Liſts *Oliphant* is placed immediately after *Elphinſton*, and before *Lovat*. As for the Heir-Female's Huſband getting a new Patent afterward to be Lord *Mordingtoun*, in the 164', the Purſuer has no Concern

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cern with it, or with the Precedency he got above his Creation; but he is informed, that it was the Place and Rank of the Peerage of *Torthorold*, that extinguiſhed a little before, which the King beſtowed on Sir *James Douglas*, when he was created Lord *Mordingtoun*; for, this plainly appears from the Ranking of the Nobility in 1606, and the later Rolls, where *Mordingtoun* is directly placed where *Carlyle* was; ſo that the Reaſoning upon this Caſe, being upon a Miſtake in Fact, all the Superſtructure built upon that Foundation falls to the Ground.

Page 36. As to the Inſtance of *Burleigh*, we refer to the Anſwer given thereto already, in the Purſuer's Condeſcendence; and we ſhall only add, That 'tis evident the Dignity muſt have been by ſpecial Patent, and Proviſion to *Michael* the firſt Lord *Burleigh*, and his adopted Son *Robert Arnot* of *Newton*, otherwiſe he could never have been Lord *Burleigh*. And that no Pretence of Controverſy may remain, we find, That tho' his Lady died in the 1638, he enjoyed the Title, Dignity and Honour of Lord *Burleigh*, for fourteen Years thereafter, till his Death, in the 1652; and all this while, no Claim or Pretence is laid to the Honour, by *John* Maſter of *Burleigh* his Son, who according to the Defender's Reaſoning, had Right to the Dignity, the very Moment of his Mother's Deceaſe.

Remark on Page 36. The Purſuer is ſomewhat ſurpriſed at the Tranſition made from the Patent granted to *Broomfleit* Lord *Veſcy*, in the 27th Year of *Henry* the VI. of *England*, and the Heirs-male of his Body, to the Creation of the Earl of *Bothwel*, in Parliament, by *James* the IV. of *Scotland*; where the Word *Hæredes*, without the Addition of *quibuſcunque*, is uſed. The Purſuer has often repeated, That the Succeſſion in Dignities of Peerage in *England*, goes upon different Principles, and is regulated by Laws of different Origins and Natures from thoſe in *Scotland:* So that there is no Parity of Argument from the one to the other. But as to the

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Caſe of *Bothwel*, the Purſuer craves Leave to remark, 1*mo*, That the Record mentioned confirms what he has always aſſerted, That a Charter erecting Lands into a *Comitatum* or *Dominium*, or *Baroniam*, does not make an Earl or a Lord of Parliament; but the Dignity is conferred, as the Words of the Record are, *per præcinctionem gladii, ut moris eſt.* The Purſuer ſhall not here repeat the many Inſtances which he has elſewhere given to prove this Point, but ſhall refer to what is contained concerning the Earldom of *Murray*, in his additional Condeſcendence, from Page 15th, to Page 21.

2*do*, It is obſervable, that the Defender here argues from the Charter granted a few Days before the Erection of the Lordſhips of *Bothwel* and *Crighton*, *hæredibus quibuſcunque*, as if that neceſſarily determined the Succeſſion in the Dignity granted a few Days after, *hæredibus*, without Addition *to Heirs-general:* The Purſuer confeſſes, if that had been a Charter of all the Lands belonging to the Family, and that the Succeſſion had not been expreſſed at all in the Creation, it would have afforded a ſtrong preſumptive Argument, that the Dignity was intended to deſcend to Heirs-general, with the Eſtate, but when the Lands of *Hails*, and many other Lands, which were the ancient Family-Eſtate, are not comprehended in that Charter, and *hæredibus quibuſcunque* are the Words determining the Succeſſion in the Lands, and *hæredes* only determine the Succeſſion in the Dignity; the Purſuer apprehends, the preſumptive Argument fails, and nothing can be concluded, but that a Daughter might have carried off the Lordſhips of *Crighton* and *Bothwel*, if a more remote Heir-male had ſucceeded to the Dignity.

But when the Defender argues in this Way, 'tis hoped he will not refuſe, that there is ſome Weight in the Argument brought by the Purſuer, from the Charters taken by Lords Barons, of their whole Lands, almoſt univerſally to Heirs-male, upon their being created Lords of Parliament, in Caſes where

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where there are no Words at all expreſſing to what Heirs the Dignity is to deſcend.

Remarks on Page 38, 39, and 40.

The Purſuer cannot but agree with the Defender, in thinking it unneceſſary to inſiſt on the Laws of other Nations; none of our Lawyers have directed us to the Laws of *Normandy*, nor indeed to the Laws of any of the many Kingdoms, mentioned at the Bottom of the Page, from *Perezius*, for our Conduct in doubtful Caſes of Succeſſion; the Purſuer therefore ſhall follow the Defender, to what he ſays in Page 39 and 40, concerning the Feudal Law, to which our greateſt Lawyers do very poſitively refer us; as to which the Purſuer apprehends, That whatever Differences of Opinion happened between *Gerardus Niger* and *Obertus de Orto*, they and all other Feudiſts happened to agree perfectly as to Male Succeſſion; and becauſe the Defender has made Choice of *Struvius*'s *Syntagma juris feudalis*, for proving this Diverſity he ſays there is, as to Male Succeſſion, the Purſuer craves Leave to ſet down the Words of that Author, to which he refers, *viz.* *Requiritur, num in ſucceſſore feudali, ut ſit habilis ad præſtanda ſervitia unde excludantur,* 1. *Fœminæ, tam defuncti filiæ, quam ejus agnatæ a latere, & per conſequens, etiam illi qui per illum fœmineum ſexum ſunt ulterius progeniti, niſi feudum fuerit fœmineum, vel pacto ad fœminas tranſitorium, in ejuſmodi feudis deficientibus, vel agnatis maſculis, fœminæ, earumque progenies ad ſucceſſionem admittuntur, in qua tamen progenie ibidem primum maſculi, ac his non exiſtentibus, fœminæ ſuccedunt.* From which Paſſage, the Purſuer deſires it may be obſerved, that he is far from ſcrewing his Argument to the Extent of the ancient Feudal Law; on the contrary, in the whole Courſe of his Reaſoning, he admits, that all Feudal Rights, and particularly Dignities in this Kingdom, are, as to Succeſſion, of the Nature of *feuda fœminea*. As to the Exception ſubjoined, concerning Succeſſion in *feudo franco vel conditionato*, the Purſuer alſo agrees

with him in that; but before the Defender can have the Benefit of that Exception, he muſt prove, that the feudal Right he contends for, is *feudum francum* or *conditionatum*; for *Craig*, *L.* 1. *Tit.* 10. § 4. *in medio*, tells us, *Quod feudum nunquam dicatur francum, niſi exprimatur, nam cum feudum francum non ſit feudum proprium, ſemper præſumitur pro proprio, niſi improprium probetur ex tenore conceſſionis.* And to ſhow how juſtly the Defender tranſlates *feudum francum*, by *Ward*, the Purſuer begs leave to ſubjoin ſome few Things our learned Feudiſt *Craig* ſays of the one and the other Species of feudal Rights. *Feudum francum*, ſays he, *Dict.* § 4. *improprium feudum eſt, ſive non rectum, neque cum definitione feudi in naturalibus qualitatibus convenire poteſt, nam a ſervitiis omnibus eſt immune.* But of *Feudum wardæ*, he ſays, *eod. Tit.* § 19. *Tale feudum cum feudi definitione, quam præmiſimus, & cum naturalibus ejus qualitatibus omnibus convenit, itaque recte feudi proprii nomini cenſeri debet, in utroque enim tenens, ſec vaſſalus ad ſervitia tenetur, ſed honeſta; immo & in hoc convenit maxime, quod ſemper præſumptio ſit pro hoc feudo, niſi aliud ex tenore inveſtituræ conſtiterit.* So that there are truly no two Things that go under the Name of feudal Rights, more widely different, than *Feudum francum* and *Ward*, which the Defender ſeems to reckon ſynonymous. For Anſwer to the Query in the End of Page 40. the Purſuer refers to his Information, where he ſhows, that whatever was the Caſe of patrimonial Eſtates, as to the Right of Primogeniture, yet he has no Occaſion, in this Caſe of a Dignity, to enter into that Queſtion, ſince it appears from the Books of the Feus, *L.* 2. *Tit.* 55. that ſo early as the Days of *Barbaroſſa*, that Dignities did not divide.

The Purſuer begs Leave to ſay, the Defender ſeems to have laid the Objection, and choſen a Law from the *Pandects* for his own Purpoſe. The Purſuer never laid his Objection to

Remark on the Objections ſtated by the Defender, Page 41.

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Female Succeſſion, on the Suppoſition that the Fair Sex was uncapable of enjoying Dignities; on the contrary, he apprehends the Law rightly ſuppoſes, that their Merits will often procure them Dignities in their own Perſons, or at leaſt *ex proviſione hominis:* But that it being fitter for Children to take their Rank and Condition in the World from their Father's, than from their Mother's Family, the Law has made *Honores*, *Munera*, and *Dignitates* deſcendable only by the Males. The Purſuer therefore cannot but obſerve, that the Law which the Defender has choſen to mention, does not at all relate to Succeſſion; he therefore thinks it neceſſary to mention *L.* 13. *ff. De Muneribus & Honoribus*, which does relate to Succeſſion, in theſe Words, *Vacatio, itemque immunitas, quæ liberis & poſteris alicujus data eſt, ad eos duntaxat pertinet, qui ejus familiæ ſunt.* And *L.* 1. § 2. *ff. De Jure Immunitatis*, in theſe Words, *Sed & generi, poſteriſque datæ, cuſtodiæque ad eos qui ex fœminis nati ſunt, non pertinent.* As theſe Laws are not founded on any ſuppoſed Incapacity of Females enjoying Dignities, but on the Impropriety of Children's following the Condition of their Mother, and not of their Father, the Force of them does not ſeem to be taken off by the Defender's Anſwer: As to what the Defender ſubjoins to his Anſwer to this Objection in Page 42. *viz. That the Eſtates were erected into Earldoms and Lordſhips*, &c. the Purſuer muſt again refer the Defender to the hypothetick Argument from the Charter of the Lordſhip of *Lovat* in the Year 1539, ſettling the Succeſſion of the Family on Heirs-male; for he can ſee no Reaſon why that Argument ſhould be good to carry the Succeſſion to the Heirs-male, in ſo many Families as the Defender has applied it to, and yet be of no Force as to the Family of *Lovat*.

Remark on the Objection ſtated by the Defender, in Page 42. *in fine*, and Anſwer in Page 34.

The Purſuer apprehends this Objection is likewiſe imperfectly ſtated, for the Purſuer does not lay the Weight of the Preſumption upon the Tenor of Patents alone; But, 1*mo*, Upon the uſual Cuſtom of Deſcent in Dignities, both before and

and after Patents came in Uſe. 2*do*, Upon the Feudal Nature of our Law of Succeſſion in *Scotland*. 3*tio*, He conjoins this Circumſtance, in which the Defender agrees with him, *viz.* That *James* I. took his Model of diſtinguiſhing Seats in Parliament by Dignities, from theſe which were anciently more extenſive by Tenor, from *England*, where Dignities by Patent had been in Uſe for many Years, *viz.* From the Middle of *Richard* II. and during the Reigns of *Henry* IV. *Henry* V. and Part of *Henry* VI.'s Reigns, all limited to Heirs-male, becauſe, perhaps, by the Laws of *England*, they would have been deſcendable to Heirs-general, and from thence conjoined with other Circumſtances; the Purſuer apprehends it may be inferred, that *James* I. and his Succeſſors would have taken the ſame Care he had ſeen taken in *England*, to limit the Deſcent of Dignities to Heirs-male by expreſs Proviſion, if the general Law in *Scotland* had not directed them of itſelf in that Courſe; but as theſe are preſumptive Arguments, the Purſuer lays no farther Strength upon them, than as they concur with other more direct and legal Proofs, to demonſtrate that Male Succeſſion is the legal Succeſſion in Dignities, by the Laws and Cuſtoms in *Scotland*.

The Defender is pleaſed to mention another Conſideration, taken from the Situation of this Family, which likewiſe deſerves a due Attention: As to what the Defender calls the Humour and Conceits of *Highland* Clans, who are fond of being led and governed by a Chief, who is capable of bearing Arms. Whatever Reaſon there be for giving that Choice the Name of Humour and Conceit, and however it may be abated in later Times, and likely to wear out, yet it is certain, that in former Times, much later than the Original of this Peerage of *Lovat*, the *Highland* Clans were capable of being of great Service to the Crown; and as Intereſt among them recommended the Heads of Families to the Dignity of Peerage, ſo this Preſumption concurs with many others, *viz.* That what influenced the Choice of the firſt inveſted, would likewiſe have an

Remark on P. 43. & 44.

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Influence, in directing the Courſe of Succeſſion, to deſcend on thoſe who would have the like Intereſt, that is, on Heirs-male.

Remarks on Page 44.

The Purſuer is at a Loſs to know, where theſe great Poſſeſſions in the South are, that belonged to the Family of *Lovat*, which the Defender pretends were as valuable as his Poſſeſſions in the *Highlands*, that were ſettled upon Heirs whatſoever. The Purſuer can venture to ſay, that tho' that Family had vaſt great Poſſeſſions in the South of *Scotland* in ancient Times, he is ſure, that his Anceſtors, ſince the Reign of King *David* II. had not one Foot-breadth of Eſtate be-ſouth *Forth:* And if he means the Lands of *Golford* in the North, they are no Barony, but a Parcel of Lands, that are given to the Houſe of *Lovat* by the Earl of *Roſs*; and of all which King *James* I. as Earl of *Roſs*, gives a Charter to *Hugh Fraſer* of *Lovat*, to him & *hæredibus ſuis*, by his Charter under the Great Seal in the Records *anno* 1430.

The Defender has very much obliged the Purſuer, by printing a Genealogy of the Family, from *Hugh* Lord *Lovat*, his Grandfather, who died in the Year 1646, which ſhows, that he is but the ſecond Degree removed from the common Anceſtor, in the Male Line, whereas the Defender is but the fifth, deſcended from an Heir-female, and of another Sirname.